

Court No. - 90

Case :- APPLICATION U/S 482 No. - 2855 of 2021

Applicant :- Tejaswi Sharma And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Adil Khan

Counsel for Opposite Party :- G.A.,Ishwar Chandra Tyagi

Connected with

Case :- CRIMINAL REVISION No. - 1888 of 2020

Revisionist :- Tejasvi Sharma

Opposite Party :- State Of U.P.And Another

Counsel for Revisionist :- Adil Khan

Counsel for Opposite Party :- G.A.,Ishwar Chandra Tyagi

Hon'ble Dinesh Pathak,J.

1. Both the aforesaid matters are arising out of matrimonial discord between the parties.

2. Instant application under Section 482 Cr.P.C. has been filed by the husband, father-in-law and mother-in-law assailing the charge sheet dated 28.06.2019, cognizance order dated 17.10.2020 passed by the Chief Judicial Magistrate, Amroha in Case Crime No.50 of 2019, under Sections 498A, 323, 504, 506 IPC and Section 3/4 of Dowry Prohibition Act, Police Station Amroha Nagar, District Amroha (J.P. Nagar), pending in the court of Chief Judicial Magistrate, Amroha.

3. However, Criminal Revision No.1888 of 2020 has been filed by husband assailing the order dated 28.09.2020 passed by learned Principal Judge, Family Court, Amroha in Complaint Case No.74 of 2019 (Smt. Shikha Sharma Vs. Tejasvi Sharma), under Section 125 Cr.P.C., Police Station Amroha Nagar, District Amroha (J.P. Nagar).

4. Heard Sri Adil Khan, learned counsel for the applicants/revisionist, Sri Shashank Shekhar, learned Advocate holding brief of Sri Ishwar Chandra Tyagi, learned counsel for the opposite party no.2 (in both the captioned cases) as well as learned

A.G.A. for the State respondent and perused the record on board.

5. Having considered the matrimonial discord, on the request made on behalf of the counsel for the revisionist in Criminal Revision No.1888 of 2020, matter has been referred before the Mediation and Conciliation Centre of this Court to explore the possibility of reconciliation between the parties, vide order dated 23.11.2020. At later stage, Application under Section 482 No.2855 of 2021 was filed. This Court, vide order dated 09.02.2021, has referred the said application to be placed before the Mediation Centre along with record of Criminal Revision No.1888 of 2020. Through process of mediation, both the parties were arrived at compromise and inked settlement agreement dated 12.11.2021. Copy of the settlement agreement dated 12.11.2021 has been submitted by the Registrar/In-charge, AHCMCC with its report dated 12.11.2021.

6. For ready reference, settlement agreement dated 12.11.2021 is quoted herein below:-

" This 2nd INTERIM SETTLEMENT AGREEMENT entered into on 12.11.2021, between Mr. Tejasvi Sharma (Revisionist-husband) and Smt. Shikha Sharma (O.P. No. 2-wife).

WHEREAS

1) Disputes and differences had arisen between the Parties hereto Criminal Revision No. 1888 of 2020 was filed before the Hon'ble High Court.

2) The matter was referred to mediation/conciliation vide order dated 23.11.2020 passed by bench of Hon'ble Dinesh Pathak,J.

3) The parties agreed that Mr. R.Y. Pandey, Advocate would act as their Conciliator/Mediator, in the Mediation Case No. 0304/2021.

4) Several joint and separate meetings were held during the process of Conciliation/Mediation on 03-03-2021, 25-03-2021, 23-09-2021, 08-10-2021 and 12-11-2021 and the parties have with the assistance of the Mediator/Conciliator voluntarily arrived at an amicable solution resolving the above-mentioned disputes and differences.

5) The marriage of Mr. Tejasvi Sharma (Revisionist-husband) and Smt. Shikha Sharma (O.P. No. 2- wife) was solemnized on 17.02.2016. Out of aforesaid wedlock the parties have no issue. They were started living separately since 26.12.2018.

6) The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediators/Conciliators.

7) In view of the Interim Settlement dated 08.10.2021. The following

settlement has been arrived at between the Parties hereto:-

a) That the parties have decided to take divorce by filing a petition u/s 13-B of the Hindu Marriage Act before the Family Court, Amroha on 16.11.2021 and shall produce certified copy of the divorce petition before the Centre on the next date fixed i.e. 10.12.2021.

b) That it has been agreed between the parties that the husband shall pay one time settlement amount of Rs. 22,00,000/- (Rupees Twenty Two Lakh only) which includes permanent alimony and Stridhan of the wife by way of Demand Draft.

c) That today i.e. 12.11.2021 the husband has produced a Demand Draft bearing no. 572727 dated 01.11.2021 for Rs. 11,00,000/- (Rupees Eleven Lakh only) drawn on State Bank of India in favour of Shikha Sharma (wife), which is being kept in the file of the Mediation Centre with the consent of the parties and shall be handed over to the wife at the time of final settlement-agreement.

d) That it has been agreed between the parties that the remaining amount i.e. Rs. 11,00,000/- (Rupees Eleven Lakh only) will be paid by the husband to the wife by way of Demand Draft at the time of final judgment in the divorce petition before the Family Court, Amroha.

e) That it has been agreed between the parties that the cases filed by them against each other will be kept in abeyance during this intervening period.

f) That it has been agreed between the parties that they shall appear again before the Centre on 10.12.2021.

DATE:12.11.2021

SC"

7. It is submitted that the terms and conditions of the settlement agreement dated 12.11.2021 are finally being complied with and nothing remains to be decided by this Court in both the aforesaid matters.

8. Learned counsel for the applicants submits that, in the above eventuality of the settlement agreement dated 12.11.2021 took place between the parties, both the aforesaid captioned cases i.e. revision arising out of proceedings under Section 125 Cr.P.C. and the application under Section 482 Cr.P.C. arising out of Case Crime No.50 of 2019 may be allowed and the criminal proceeding initiated against the present applicants may be quashed. It is further submitted that both the parties are judicially separated. Both the parties have entered into settlement agreement through process of mediation on their own volition and without any duress. It is further submitted that both the parties have buried the

hatchet and there is no grudges between them against each other. To quash the cognizance order as well as criminal proceeding, learned counsel for the applicants has relied upon the following judgments of the Hon'ble Apex Court :-

(i) B.S.Joshi & Others Vs. State of Haryana & Others; (2003) 4 SCC 675.

(ii) Nikhil Merchant Vs. Central Bureau of Investigation; (2008) 9 SCC 667.

(iii) Manoj Sharma Vs. State & Others; (2008) 16 SCC 1.

(iv) Gyan Singh Vs. State of Punjab (2012) 10 SCC 303.

(v) Narindra Singh & Others Vs. State of Punjab (2014) 6 SCC 466.

9. In a recent judgment passed by a Three Judges' Bench of the Apex Court in the Case of **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another, reported in AIR 2017 SC 4843**, Hon'ble Supreme Court has summarized the ratio of all the cases decided earlier with respect to quashing of F.I.R./charge-sheet/criminal proceeding on the ground of settlement between the parties and expounded the ten categories in which application under Section 482 could be entertained for quashing the F.I.R./charge-sheet/criminal proceeding on the basis of compromise. Para no. 15 of the said judgement summarizing the proposition in this respect is reproduced below:-

"15. (i) Section 482 preserves the inherent power of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised;(i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot approximately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

10. Learned AGA has no objection, in case, aforesaid both captioned cases are decided by this Court on the basis of compromise took place between the parties before the Mediation Centre.

11. Learned counsel for the opposite party No. 2 has nodded the factum of the compromise entered into between the parties and he has no objection, if both the aforesaid cases are decided finally on

the basis of the said settlement agreement. He also submits that both the parties have voluntarily entered into compromise and opposite party no. 2 does not want to prosecute the present case against the applicants any more as no dispute remains between the parties.

12. Having considered the settlement agreement dated 12.11.2021 and with the assistance of the aforesaid guidelines, keeping in view the nature of gravity and severity of the offence, which are more particular in private dispute, it is deemed proper that in order to meet the ends of justice, the present proceeding should be quashed. In result, dispute between the parties will put to an end, peace will be resorted and relationship between them will be smooth. No useful purpose would be served to keep the present matter pending inasmuch as both the parties have buried the hatchet and as the time passes, it will be difficult to prove the guilt of the accused. The continuation of criminal proceeding would cause oppression and prejudice.

13. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the settlement agreement dated 12.11.2021 inked between the parties, following order is being passed:-

(i) Criminal Misc. Application U/s 482 No.2855 of 2021 is allowed and the entire criminal proceedings arising out of Case Crime No.50 of 2019, as mentioned above, is hereby quashed.

(ii) Criminal Revision No.1888 of 2020 is allowed and order challenge dated 28.09.2020 passed by learned Principal Judge, Family Court, Amroha in Complaint Case No.74 of 2019 (Smt. Shikha Sharma Vs. Tejasvi Sharma), under Section 125 Cr.P.C., Police Station Amroha Nagar, District Amroha (J.P. Nagar) is quashed.

(iii) Both parties shall abide by the terms and conditions of the settlement agreement dated 12.11.2021.

14. Let a copy of the order be transmitted to the concerned lower Court for necessary action.

Order Date :- 12.12.2023

Mini